1949. **File No.** City Police II/49 (R)

Legal Department-

B **BRANCH**

Subject:— Rules under the Bombay City Police Act-1902.

E R-U

File No. City Police II/49 (R)

Com. 226

73-B

Legal Department.

The question for consideration is whether the draft rule proposed by the Commissioner of Police at p. 3 and the proviso there to proposed in H.D. note dated 22.12.48. at p. 6 ante would be covered by the provisions of section 22(1) (b) of the City of Bombay Police Act, 1902.

2. Section 22(1) (b) of the City Police Act empowers the Commissioner of Police, subject to the control of the Provincial Government, to make rules for regulating traffic of all kinds in streets and public places, and the use of streets and public places by persons riding, driving, cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public. Obviously the proposed rule does not fall under the latter part of section 22(1)(b) . Under the first part of the section rules can be made to regulate traffic in streets and public places. Traffic means coming and going of persons, vehicles etc. by road. The mere presence of a few persons in a vehicle after all the seats are fully occupied would not affect in any way the traffic in the street. The effect of the proposed rule is to control the sitting accommodation in the vehicle itself rather than to control the traffic outside in the street. (cf. section 68(2)(i) of the Motor Vehicles Act, 1939 in Chapter IV relating to control of transport vehicles.) It appears that the proposed rule is not covered by the provisions of section 22(1)(b).

3. In this connection attention of the Department is invited to section 461A(2) (f) of the City of Bombay Municipal Act, 1888 inserted by Bombay Act XLVIII of 1948. Under that section the Municipal Corporation is competent to make by-laws generally for regulating the travelling

in or upon vehicles of the Bombay Electric supply and Transport Undertaking used for the conveyance of passengers and it is presumed that the Corporation has made a by-law for the purpose.

Sd/- J.R.Dhurandar.

17-1

Additional Secretary to Government.

U.R. to H.D., No. 610 , dated the 18th January 1949.

V.M.D. /1-6
4c.

Revised draft rule.

Whenever it shall appear to the Commissioner of Police that any person keeping a place of public entertainment is knowingly permitting prostitutes or persons of notoriously bad character for the purposes of their trade to meet or remain in such place he may direct such person to close the place either permanently or for such period as he may fix. The person to whom such direction is issued by the Commissioner shall forthwith comply with it."

V.M.D ./i.6
4c.

Legal Department.

A revised draft of the rule suggested by the Commissioner of Police on p. 11 is sent herewith.

2. The rule suggested by the Commissioner of Police provides inter alia that he shall have power in his absolute discretion at any time to cancel or suspend any licence granted under the rules. This part of the rule is, in virtue of the provisions of section 136 of the City of Bombay Police Act, 1902, out of order. Section 136 prescribes the specific circumstances in which the Commissioner of Police can suspend or revoke the licence granted under the provisions of the Act. Section 22(1) (f) which empowers the Commissioner of Police to make rules for licensing the keeping of places of public amusement or entertainment is subject to the provisions of section 136, and, therefore, no rule can be made under section 22(1)(f) empowering the Commissioner to ~~x~~ suspend or revoke the license granted under the Act in his absolute discretion. Moreover no rule empowering the Commissioner to ~~x~~ suspend or revoke the license is necessary as section 136 itself gives that power to him.

Sd/- J.H.Dhurandar.
11.4
Additional Secretary to Government.

U.H. to H.D., No. 3983 , dated the 12th April 1949.

V.M.D. /1-6
4e.

Legal Department.

Subject to the following observations a revised draft notification in place of the draft at pages 5-6 ante is sent herewith.

2. Section 22(1)(f)(iia) of the City of Bombay Police Act empowers the Commissioner of Police to make rules for licensing, controlling or, in order to prevent the obstruction, inconvenience, annoyance, risk, danger or damage of the residence or passangers in the vicinity prohibiting the using of a loud-speaker in any public place or place of public entertainment. The word 'loud-speaker' will have the meaning as used in the Act. The proposal of the Commissioner of Police to define the word "loud-speaker" is not in order as the rules to be made under section 22 cannot add to or take away from the meaning of the word used in the Act. The last portion of draft rule 8 proposed by the Commissioner of Police is so far as it requires a license to comply with orders or directions regarding the control etc. of assembly issued under section 23(1)(a) should not form part of the rules to be issued under section 22(1)(f) (iia). Rule 8 has therefore been deleted.

Sd/- J.R.Dhurandar.

21-1

Additional Secretary to Government.

U.R. to H.D. No 1045 , dated the 23rd January 1950.

V.M.D./1-6
4c.